

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----	X	
Teachers4Action et al,	:	Civil Action #
	:	08-cv-548 (VM)(AJP)
v.	:	
	:	
Bloomberg et al,	:	NOTICE OF FILING
	:	
	:	
-----	X	

Edward D. Fagan hereby declares and says:

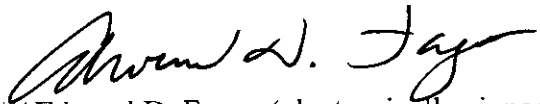
1. I am Plaintiffs' counsel and I file this Declaration to supplement the 22 August 2008 filing to provide the following.
2. As to (i) EEOC Right to Sue Letters or Complaints or other identification of EEOC complaints, or (ii) NYSDHR letters, complaints or other identification of NYSDHR complaints, or (iii) Union Grievances or (iv) explanations related to equitable tolling, attached are:
 - a. Johnson, Eleanor – Right to Sue Letter (Exh. 1 - Note: Ms. Johnson was unable to find the letter until this weekend);
 - b. Radtke-Gabriel, Alena – EEOC, NYSDHR & Union Complaints / Documentation (Exh. 2 - Note: Ms. Radtke-Gabriel has certain disabilities and her documents were not available to me before now); and
 - c. Scheiner, Brandi – EEOC and NYSDHR documents attached (Exh. 3 - Ms. Scheiner is out of town and documents provided via another teacher).
3. As per my prior representations to the Court, in the coming days, I have communicated with named Plaintiffs and I anticipate that this coming week Plaintiffs will be filing FRCP 41 (a) (1) Notice of Voluntary Dismissals, without prejudice, as to the following Counts:

- a. Fourth Count – Constructive Discharge (all but a few Plaintiffs such as Plaintiffs Jaime Castro and Michael McLoughlin will release this claim);
 - b. Seventh Count – Aiding & Abetting Breach of Fiduciary Duty;
 - c. Eighth Count – Negligent Hiring, Retention & Supervision (vs DOE);
 - d. Tenth Count – Misrepresentation, Fraud & Conspiracy to Violate Plaintiffs’ Rights; and
 - e. Twelfth Count –Declaratory Judgment.
4. Plaintiffs will continue with what they consider and pray the Court will realize are the “Core” Causes of Action, including:
 - a. First Count – Violation / Interference with Constitutionally Protected Rights - 1st, 5th & 14th Amendment Freedom of Speech, Association, Due Process & Equal Protection – See pp. 26 – 32;
 - b. Second Count – Harassment & Hostile Work Environment (“The Rubber Rooms”);
 - c. Third Count – Retaliation;
 - d. Fourth Count – Constructive Discharge (for only a few plaintiffs);
 - e. Fifth Count – Breach of Contract;
 - f. Sixth Count– Breach of Fiduciary Duties/Duty of Fair Representation; and
 - g. Ninth Count – Negligent Hiring, Retention and Supervision (UFT Rubber Room Task Force and other Personnel).
5. There may be other Causes of Action Plaintiffs will Voluntarily Dismiss as part of their response to the Court’s comments that whatever Plaintiffs (and the parties) can do to help reduce the different issues that the Court needs to focus upon in the

Motions so that they can be resolved more expeditiously and to thereby allow the case to proceed to discovery and trial.

6. Formal Voluntary Dismissals designating each Plaintiff to whom the Voluntary Dismissal of the particular causes of action applies will be filed later this week.
7. The Court should note that certain named Plaintiffs, such as Plaintiff Florian Lewenstein, may not join in or agree with my recommendations that certain causes of action be Voluntarily Dismissed and it is up to them to advise the Court of their intentions.
8. The foregoing statements by me are true to the best of my knowledge, information and belief.

Dated: August 24, 2008
New York, NY


/s/ Edward D. Fagan (electronically signed)

Edward D. Fagan Esq.
5 Penn Plaza, 23rd Floor
New York, NY 10001
Tel. (646) 378-2225
Plaintiffs' Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing August 24, 2008 **NOTICE OF FILING** along with attachments is being filed electronically with the Clerk of the Court.

Hard copies of the papers are being hand delivered to the Hon. Andrew J. Peck USMJ and to counsel of record Blanche Greenfield Esq. Office of Corporation Counsel 100 Church Street, 4th Floor, New York, NY and Charles Moerdler Esq. of Stroock Stroock & Lavan 180 Maiden Street, New York, NY

And a courtesy copy delivered electronically to Florian Lewenstein, Plaintiff Pro Se – via email at florianjl@gmail.com

Dated: August 24, 2008
New York, NY

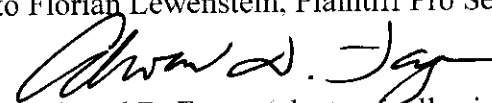

/s/ Edward D. Fagan (electronically signed)
Edward D. Fagan, Esq.

EXHIBIT 1

DISMISSAL AND NOTICE OF RIGHTS

To: Eleanor B. Johnson

From: New York District Office
33 Whitehall Street
5th Floor
New York, NY 10004

☐

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

16G-2006-04366

Holly M. Woodyard,
Investigator

(212) 336-3643

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- ☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- ☐ Your allegations did not involve a disability as defined by the Americans With Disabilities Act.
- ☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- ☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.
- ☐ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- ☒ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- ☐ Other (briefly state)

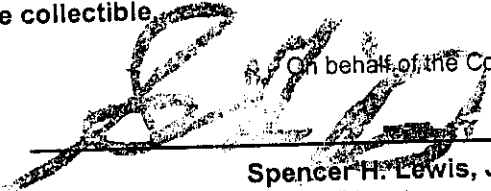
- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years before you file suit may not be collectible.**

Enclosures(s)

On behalf of the Commission

Spencer H. Lewis, Jr.,
Director

5/29/08

(Date Mailed)

cc:

City of New York Dept. of Education
52 Chambers Street, Room 308
Office of Legal Services
New York, NY 10007
Attn: Aaron Block- Mary McKenna Rodriguez Esq.

Exhibit 1

EXHIBIT 2

11/2/07



**NEW YORK STATE
DIVISION OF HUMAN RIGHTS
COMPLAINT FORM**

Please complete this form completely, sign it before a notary public, have it notarized, and return to the New York State Division of Human Rights' Central office, One Fordham Plaza, 4th Floor, Bronx, NY 10458. For further information, and/or for assistance in filing a complaint, please refer to our website at www.dhr.state.ny.us, or call your local New York State Division of Human Rights office (see attached list).

1. PERSONAL DATA

First Name Alena M. I. _____ Last Name Radtke - Gabriel

Street Address [REDACTED] Apartment # [REDACTED]

City [REDACTED] State [REDACTED] Zip Code [REDACTED]

Primary Phone Number : Area Code [REDACTED] -- [REDACTED] Ext _____

Secondary Phone Number : Area Code [REDACTED] Cell [REDACTED] Ext _____

2. JURISDICTION

I wish to file a complaint of discrimination in (check only one)

- ☒ Employment (The Employer being charged must have four or more employees.)
- ☐ Housing
- ☐ Public Accommodations
- ☐ Credit
- ☐ Educational Institutions
- ☐ Volunteer Firefighters
- ☐ Apprentice Training
- ☐ Boycotting/Blacklisting

The most recent act of discrimination against me occurred on (If the discrimination is still going on, use today's date) :

Month Nov. Day 2 Year 2007

Exhibit 2

3. Basis

I believe that I am being discriminated against based on the following factor(s) (Please check all that you believe apply, and be as specific as possible for each factor checked.):

- ☒ Age (Please Specify Date of Birth) : 6/14/60 46 years old
- ☒ Arrest Record (Only if Resolved in your Favor) (falsely via principal supporting parents of two students in arrest in retaliation to a grievance I filed - outlined below against the principal)
- ☐ Conviction Record (Please Specify) : _____
- ☐ Creed/Religion (Please Specify) : _____
- ☒ Disability/Perceived Disability/Past Disability

Please Describe One or More Disability: Neck and Head Injury

- ☐ Genetic Pre- Disposition (Please Specify) _____
- ☒ Marital Status : ☒ Unmarried ☐ Married ☐ Separated ☐ Divorced ☐ Widowed
- ☐ Military Status (Please Specify) : _____
- ☐ National Origin (Please Specify) : _____
- ☒ Race (Please Specify) : A black employee from the community said to me the principal does this to all the white people.
- ☒ Color (Please Specify) : white Retaliate have a s.
- ☒ Sex: (If so, please specify) ☐ Male ☒ Female ☐ Pregnancy
- ☐ Sexual Orientation/Perceived Sexual Orientation (Please Specify) : _____
- ☒ Retaliation for Opposing Discrimination

Please specify: this involves retaliation for opposing discrimination based on one of the categories listed above, such as by filing a discrimination case, being a witness in a discrimination case, and/or objection to a discriminatory practice):

Marchos I grieved the principal how he handled an accident leave. He placed demands on me knowing I could be neurologically impaired and a good black employee from the community said he does this to all the white teachers.

☐ Violation of a Prior Order issued by the New York State Division of Human Rights

Please Specify Date of order, if Known: _____

- ☐ Familial Status (presence of children in the household) For housing cases only

He threatened he would fire me if I did not come back to work to a change of assignment against

which ended up in my being arrested,
until the evening after my step 2
grievance against the principal, on
6/7/05.

Also, I feel I am being retaliated
against as a mandated reporter
~~on the part of~~^{for} the two students
whose parents had me arrested, of
which the principal has apparently
supported.

4. RESPONDENT

Please provide information below regarding the party that discriminated against you ("Respondent").

Name of Firm, Organization, or Individual Against Whom you are Filing: (If you are naming a co-worker, supervisor, agent, etc., please also name the firm or organization.):

Name DOE (re: PS 46 Princ. George Young, Manhattan, NY)
 Address 65 Court St.
 City Brooklyn State NY Zip Code _____
 Phone Number: Area Code (212) 690-5882 Ext _____
PS 46

5. DESCRIPTION OF DISCRIMINATION

Please provide a brief description of the discrimination against you. Please try to be as specific as possible with respect to acts, dates, and names. Please write or print legibly, or attach a typed description.

Even though the ^{NYC} DOE and Principal of PS 46, George Young know I could be neurologically impaired, they continue to charge me falsley and keep me in harm's way assigned to a re-assignme center or "rubber room", currently at 388 125th St, NY, NY 10027 6th Fl.
 I was rear-ended in a hit and run (in my car) on the way into school to teach my Kindergarten class on Nov. 4, 2004; I was bashed in the back by a colleague with a chair on March 16, 2006 while assigned to a "rubber room".
 My neurologist says this incident disabled me yet the DOE refuses

6. EXECUTION OF COMPLAINT

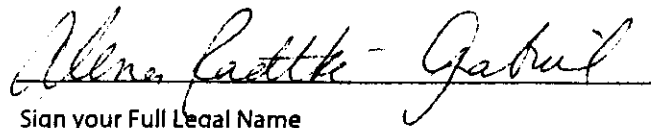
Based on the foregoing, I charge the above-named Respondent with an unlawful discriminatory practice, in violation of the New York State Human Rights Law.

By filing this complaint, you are also filing your complaint with the Equal Employment Opportunity Commission under the Americans With Disabilities Act (covers disability related to employment) and/or Title VII of the Civil Rights Act of 1964, as amended (covers race, color, religion, national origin, sex relating to employment) and/or the Age Discrimination in Employment act, as amended (covers ages 40 years of age or older in employment) or with HUD under Title VIII of the Federal Fair Housing Act, as amended (covers acts of discrimination in housing) as applicable. This will protect your rights under Federal law.

I hereby authorize the New York State Division of Human Rights to accept this complaint on behalf of the U.S. Equal Employment Opportunity Commission, subject to the statutory limitations contained in the aforementioned law and/or to accept this complaint on behalf of the U.S. Department of Housing and Urban Development for review and additional filing by them, subject to the statutory limitations contained in the aforementioned law.

I have not commenced any other civil action, nor do I have an action pending before any administrative agency, under any state or local law, based upon this same unlawful discriminatory practice.

I swear under penalty of perjury that I am the complainant herein; that I have read (or have had read to me) the foregoing complaint and know the contents of this complaint; and that the foregoing is true and correct, based on my current knowledge, information, and belief.


Sign your Full Legal Name

Subscribed and Sworn to

Before me this 2nd day
of November 2007

GLENN NICHTEHAUSER
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01N4983668
QUALIFIED IN QUEENS COUNTY
COMMISSION EXPIRES JULY 1, 2011


Signature of Notary Public

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
New York District Office
33 Whitehall Street, 5th Floor
New York, New York 10004-2112

TO:
New York City Department of Education
52 Chambers Street Room 308 Office of Legal
Services
New York, NY 10007

PERSON FILING CHARGE:
Alena Radtke-Gabriel
THIS PERSON (Check one):
Claims to be aggrieved [x]
Files on behalf of other(s) []
DATE OF ALLEGED VIOLATION:
11/2/2007
PLACE OF ALLEGED VIOLATION:
New York County
EEOC CHARGE NUMBER:
16GA800749
FEPA CHARGE NUMBER:
10121360

NOTICE OF CHARGE OF DISCRIMINATION WHERE AN FEP AGENCY WILL INITIALLY PROCESS

YOU ARE HEREBY NOTIFIED THAT A CHARGE OF EMPLOYMENT DISCRIMINATION UNDER

- [] Title VII of the Civil Rights Act of 1964
- [] The Age Discrimination in Employment Act of 1967 (ADEA)
- [X] The Americans with Disabilities Act (ADA)

HAS BEEN RECEIVED BY: The New York State Division of Human Rights (FEP Agency) and sent to the EEOC for dual filing purposes.

While the EEOC has jurisdiction (upon expiration of any deferral requirements if this is a Title VII or ADA charge) to investigate this charge, EEOC may refrain from beginning an investigation and await the issuance of the FEP Agency's final findings and orders. These final findings and orders will be given weight by EEOC in making its own determination as to whether or not reasonable cause exists to believe that the allegations made in the charge are true.

You are therefore encouraged to cooperate fully with the FEP Agency. All facts and evidence provided by you to the Agency in the course of its proceedings will be considered by the Commission when it reviews the Agency's final findings and orders. In many instances the Commission will take no further action, thereby avoiding the necessity of an investigation by both the FEP Agency and the Commission. This likelihood is increased by your active cooperation with the Agency.

As a party to the charge, you may request that EEOC review the final decision and order of the above named FEP Agency. For such a request to be honored, you must notify the Commission in writing within 15 days of your receipt of the Agency's issuing a final finding and order. If the Agency terminates its proceedings without issuing a final finding and order, you will be contacted further by the Commission.

For further correspondence on this matter, please use the charge number(s) shown.

- [] An Equal Pay Act investigation (29 U.S.C. §206(d)) will be conducted by the Commission concurrently with the FEP Agency's investigation of the charge.
- [X] Enclosure: Copy of the Charge


BASIS FOR DISCRIMINATION: Age, Arrest Record, Disability, Race/Color, Sex, Opposed
Discrimination/Retaliation

CIRCUMSTANCES OF ALLEGED VIOLATION:
SEE ATTACHED N.Y.S. DIVISION OF HUMAN RIGHTS COMPLAINT

DATE: November 2, 2007

TYPED NAME OF AUTHORIZED EEOC OFFICIAL:
Spencer H. Lewis, Jr.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
New York District Office
33 Whitehall Street, 5th Floor
New York, New York 10004-2112

Alena Radtke-Gabriel


EEOC Charge Number: 16GA800749
NYSDHR Case Number: 10121360

NOTICE

This office has been informed that you filed a complaint of employment discrimination with the New York State Division of Human Rights (NYSDHR). The purpose of this notice is to inform you of your federal rights pursuant to one or more of the statutes under which you may have filed. Please be advised that your complaint will be investigated by the New York State Division of Human Rights, not the Federal Equal Employment Opportunity Commission (EEOC). All questions, correspondence and status reports with regard to your case must be directed to the New York State Division of Human Rights office where your complaint was filed.

YOUR FEDERAL RIGHTS (if you filed under):

- [] Title VII of the Civil Rights Act of 1964, as amended – If you want to file a private lawsuit in federal district court with your own private attorney because you do not want the New York State Division of Human Rights to conduct an investigation, you may request from the EEOC a Notice of Right to Sue, 180 days after you have filed your complaint. Once the EEOC grants your request, it is only valid for ninety (90) days from the date the Notice was issued, after which your time to sue expires. If you want the New York State Division of Human Rights to conduct an investigation, you do not need to make this request, or to contact or write either agency. The New York State Division of Human Rights will contact you and/or advise you in the near future of their investigation and determination findings.
- [X] The Americans with Disabilities Act of 1990 (ADA) – Same as Title VII, above.
- [] The Age Discrimination in Employment Act of 1967, as amended (ADEA) – If you want to file a private lawsuit with your own private attorney, you could do so any time after 60 days from the date you filed your complaint with the New York State Division of Human Rights. This is only if you do not want the New York State Division of Human Rights to conduct an investigation, otherwise you do not need to do anything at this time. The New York State Division of Human Rights will contact you and/or advise you in the near future of their investigation and determination findings.

Date: November 2, 2007

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
New York District Office
33 Whitehall Street, 5th Floor
New York, New York 10004-2112

EEOC REVIEW PROCEDURE

If you want the EEOC to review the New York State Division of Human Rights final determination, because you are not satisfied with their final findings, you may request that the EEOC conduct a substantial weight review. This request must be done in writing to the EEOC and within fifteen (15) days from the date you received the New York State Division of Human Rights final determination. Otherwise, we will adopt the state findings.

Your review request must specify the reason(s) why you do not agree with the New York State Division of Human Rights final determination.

Mail your request for substantial weight review to:

Equal Employment Opportunity Commission
Attn: State and Local Unit
33 Whitehall Street, 5th Floor
New York, New York 10004-2112

This address is for review purposes only. Remember, if you have questions concerning the status of your case, you must contact the New York State Division of Human Rights.

Date: November 2, 2007



United Federation of Teachers
A Union of Professionals

January 12, 2006

Ms. Alena Radtke-Gabriel
[REDACTED]
[REDACTED]

UFT Case # [REDACTED]

Dear Ms. Radtke-Gabriel:

Your appeal to the Ad Com Grievance Committee on the above captioned matter was heard on Monday, January 10, 2006 at 5:00 pm in Conference Room A on the 15th floor of 52 Broadway.

After considering the facts you presented and carefully reviewing your case, the Committee has determined that your grievance cannot be successfully pursued. The Committee has concluded that we cannot overcome the Department of Education's argument that your Principal had valid educational reasons for your reassignment. Additionally, this case is moot since you were reassigned to the ROC and therefore there is no remedy.

As a result, we regret that there is no further action that the Union can take on your behalf regarding this grievance. However, please contact your UFT District Representative, Dwayne Clarke to discuss a possible harassment grievance.

Sincerely,

Michael Mendel
Director of Staff

MM/gb

Cc: Howard Solomon



United Federation of Teachers
A Union of Professionals

October 19, 2006

Alena Radtke-Gabriel
[REDACTED]

Dear Ms. Alena Radtke-Gabriel:

We are pleased to inform you that our committee has decided to pursue a "Special Complaint" on your behalf.

We have found sufficient substance in the information provided by you that would allow the Union to file a special complaint.

You will be contacted by our office in the near future regarding the status of this matter.

Respectfully,


Jerry Goldman
Manhattan Borough Representative

C: H. Solomon
J. Huart

*
UFT Reps
did nothing
to follow up
w/ this "Special
Complaint"

EXHIBIT 3

Brandi Dawn Scheiner

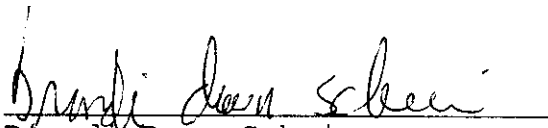


Kumiki Gibson, Commissioner
NYS Division of Human Rights
One Fordham Plaza, 4th Floor
Bronx, New York 10458

Re: Brandi Dawn Scheiner v. City of New York, Department of
Education
SDHR Case No. 10117463

Dear Commissioner:

I hereby express my wish to withdraw my above-referenced case filed with the New York State Division of Human Rights. I understand that, upon receipt of this letter, the Division will dismiss my case without further proceedings.


Brandi Dawn Scheiner

3/17/08
(Date)

"
Never got Right to Sue
Letter / Despite timely
request for letter"

Exhibit 3